IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ERIC BURT, GARY EDWARDS, SHERRY HARTFORD, JOANN IRWIN, JOHN MOORE, CLIFFORD PEASE, DAVID SNELL, HAROLD SNIVELY, ALAN WALTER, DUSTIN WEST, PAUL-DAVID WINTERS, CHERI STERLIN, LAURA COLEMAN, CHARLES CROW, RICHARD "JASON" MORGAN,	)	No. 80998-4
Respondents,	)	En Banc
v.	)	
WASHINGTON STATE DEPARTMENT OF CORRECTIONS,	)	
Respondent,	)	
ALLAN PARMELEE,	)	
Petitioner.	)	Filed May 13, 2010

C. JOHNSON, J.—This case involves a challenge to a public records injunction proceeding under chapter 42.56 RCW, where employees moved to enjoin

their employer, the Department of Corrections (DOC), from releasing documents requested under the Public Records Act (PRA). Mr. Allan Parmelee, the requester of these records, was not joined in the action. The trial court enjoined the release of the requested records. Mr. Parmelee filed a limited notice of appearance, a motion to intervene, and a motion to reconsider in the Walla Walla Superior Court. Mr. Parmelee also requested attorney fees and costs pursuant to the PRA. The trial court denied these motions. Mr. Parmelee appealed, and the Court of Appeals affirmed the trial court. We reverse and hold Mr. Parmelee's joinder was required pursuant to CR 19.

FACTS

On or about October 7, 2004, Mr. Parmelee, an inmate at the Washington State Penitentiary (WSP), requested the disclosure of documents containing information for several DOC employees at the WSP. Mr. Parmelee sent his request to Ms. Megan Murray, the DOC's public disclosure coordinator. On December 22, 2004, Ms. Murray informed Mr. Parmelee that, because the affected employees planned to seek injunctive relief, the DOC would not release the documents Mr. Parmelee requested "until a hearing date is scheduled and a decision is made by [the] Walla Walla Superior Court . . . ." Clerk's Papers (CP) at 500.

On January 26, 2005, 11 DOC employees filed suit against the DOC, seeking a protective order, basing their claim on privacy. Although the employees signed the complaint, they gave no addresses. Four additional plaintiffs were added by amended complaint; they also did not provide addresses. The employees did not name Mr. Parmelee as a party to this lawsuit. By letter, on February 1, 2005, Ms. Murray informed Mr. Parmelee the hearing for the lawsuit was set for February 22, 2005. In the letter, Ms. Murray stated she would "notify [Mr. Parmelee] of the outcome of the hearing . . . ." CP at 499.

On March 14, 2005, the DOC filed a memorandum in support of granting the protective order requested by its employees. CP at 12-19. At the hearing, the trial court permanently enjoined the release of the requested records: Mr. Parmelee, the requester, was never joined in the lawsuit.

On March 30, 2005, Mr. Parmelee received a copy of the trial court's order and notice that the trial court denied his PRA request. Following this notice, Mr. Parmelee filed a limited notice of appearance seeking to intervene and requested that the trial court reconsider. CP at 123-30. He also argued that the plaintiffs' addresses were erroneously absent from the pleadings. The trial court denied his motion. Mr. Parmelee appealed, arguing, among other things, that his joinder in the

action was mandatory under CR 19. CP at 485-93.

The Court of Appeals affirmed the trial court and concluded that "Mr. Parmelee was not needed for a just adjudication, nor was he needed in equity and good conscience to proceed." *Burt v. Dep't of Corr.*, 141 Wn. App. 573, 580, 170 P.3d 608 (2007). The Court of Appeals held the motion to intervene under CR 24 was untimely. It also held the failure to include the plaintiffs' addresses with the pleadings did not constitute error in this case. Because Mr. Parmelee did not prevail on any of his claims, his request for attorney fees and costs was also denied.

ISSUES

1. Whether, under CR 19, the requester of records under the PRA must be joined in an action that seeks to enjoin the disclosure of the requested records?
2. Whether Mr. Parmelee's motion to intervene should have been granted, under CR 24?
3. Whether pleadings that fail to provide the addresses of the plaintiffs' constitutes CR 11 violations and reversible error?
4. Whether Mr. Parmelee is entitled to attorney fees and costs under the PRA?

STANDARD OF REVIEW

Where judicial review of an agency's action is taken or challenged under

RCW 42.56.030 through 42.56.520, our review is de novo. *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 731, 174 P.3d 60 (2007). The interpretation of court rules is a matter of law, which we review de novo. *State v. Robinson*, 153 Wn.2d 689, 693, 107 P.3d 90 (2005).

ANALYSIS

This matter concerns chapter 42.56 RCW, the PRA,[1] which was enacted in 1972. The PRA "is a strongly worded mandate for broad disclosure of public records." *Soter*, 162 Wn.2d at 731 (quoting *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)). This act requires all state and local agencies to disclose any public record upon request, unless it falls within certain specific, enumerated exemptions. The language of the PRA identifies the public's interest in the full disclosure of public records: "The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that *the public interest will be fully protected*." RCW 42.56.030 (emphasis added); *see also Spokane Police Guild v. Liquor Control Bd.*,

[1]The PRA was previously named the public disclosure act (PDA), and the portion of the PDA concerning public records was formerly codified at RCW 42.17.330. For simplicity, we refer to the PDA as the PRA unless otherwise noted.

112 Wn.2d 30, 33, 769 P.2d 283 (1989). "The stated purpose of the Public Records Act is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions." *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994).

Mr. Parmelee requested particular records pertaining to several DOC employees. He sought photographs, addresses, incomes, retirement and disability information, administrative grievances or internal investigations, and any other related documents. The DOC employees responded by filing a lawsuit to enjoin the release of these records.

Under the PRA, RCW 42.56.540, persons named in a request for records or to whom the requested record specifically pertains, may enjoin the release of such records. The superior court may issue an injunction if "examination would clearly not be in the public interest and would substantially and irreparably damage any person . . . ." RCW 42.56.540. Mr. Parmelee was not joined in the injunction action, and he challenges the failure to join him.

Here, the core issue in Mr. Parmelee's case is whether the requester of public documents (records) pursuant to the PRA is an indispensable party to an action

brought under RCW 42.56.540 seeking to enjoin disclosure of those records. The civil rules provide for the joinder of parties in an action. CR 19 pertains to mandatory joinder. CR 19 provides in relevant part: "(a) . . . A person . . . shall be joined as a party in the action if . . . (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest . . . ." Our cases have recognized, as helpful, a two-part inquiry for making this determination. *Gildon v. Simon Prop. Group, Inc.*, 158 Wn.2d 483, 494-95, 145 P.3d 1196 (2006).

First, we determine whether a party is needed for just adjudication. To determine whether a party is necessary, CR 19 requires the potentially necessary party to have an interest relating to the subject of the action. Once such an interest is established, the party must be "so situated that the disposition of the action in his absence *may* (A) as a practical matter impair or impede his ability to protect that interest . . . ." CR 19(a)(2)(A) (emphasis added). Use of the term *may* suggests a low standard that requires a showing of possibility that the failure to join will impair or impede the party's interest. If the interested party is necessary and is "subject to service of process and [his or her] joinder will not deprive the court of jurisdiction

over the subject matter of the action," the party in the action "*shall be joined*" by the court if feasible. CR 19 (emphasis added).

Second, where an absent party is necessary but it is impossible to join the party, then the court determines whether in equity and good conscience the action should proceed with the parties before it and without the necessary party. If not, the absent necessary party is indispensable. Generally, under CR 19, where a necessary party was not joined in an action, the proceedings are subject to challenge and a decision will be overturned where the judgment was not in favor of the absent party or where another party is prejudiced by the absence. *Geroux v. Fleck,* 33 Wn. App. 424, 655 P.2d 254 (1982).

Here, Mr. Parmelee argues his joinder in the injunction proceeding was mandatory under CR 19.[2] Mr. Parmelee's argument is most accurately stated as follows: he should have been joined in the injunction proceeding because he was a necessary party whose joinder was feasible. CR 19(a).[3] If Mr. Parmelee met the requirements set out in CR 19(a), the trial court was bound, under the plain language

[2]The DOC contends Mr. Parmelee improperly raises the indispensable party issue for the first time on appeal. But we agree with the Court of Appeals that while Mr. Parmelee did not extensively argue this issue below, he mentioned joinder in the caption of his motion and cited CR 19 in his reply memorandum. This is sufficient to satisfy RAP 2.5(a).

[3]CR 19(b) provides for the situation in which joinder is not feasible and indispensability must be determined; such a situation is not implicated by the facts in this case.

of the rule, to order Mr. Parmelee's joinder.

Here, no party disputes that Mr. Parmelee has an interest in the subject of the action; he is the requester of the records.[4] *See* Resp't's Supp. Br. at 12 n.4 (recognizing that Mr. Parmelee would be an interested party and that, "[i]f a motion had been made, CR 19(a) arguably requires joinder of an *identified records requestor* in a case seeking a protective order against a request." (emphasis added)).

The stated purpose of the PRA is to protect the public's interest in being able to obtain public records. Without an advocate for the release of the requested records, this purpose can be frustrated. Here, no such advocate existed. It was the right of Mr. Parmelee to request these records, and it was the right of Mr. Parmelee to seek to protect his interest and the public's interest in seeking these records.

Mr. Parmelee claims that, because the action filed by DOC employees was against the DOC, a truly adversarial proceeding wherein his interests would have been adequately protected in his absence could not have occurred. Mr. Parmelee

[4]The attorney general's office also recognizes the legal interest of the requester in a PRA injunction proceeding and has promulgated a rule providing as much. *See* WAC 44-14-04003(11) (recognizing "[t]he requestor has a interest in *any* legal action to prevent the disclosure of the records he or she requested" (emphasis added)). WAC 44-14-04003(11) also states that, "[i]f an injunctive action is filed, the third party or agency should name the requestor as a party or, at a minimum, must inform the requestor of the action to allow the requestor to intervene." Although the WAC does not suggest joinder of the requester is mandatory under its model rules, it does provide that a person in Mr. Parmelee's position has an interest in this injunction proceeding. Although a situation may arise where the requester's joinder is not mandatory, this is not that case.

argues the DOC stood in a conflicted position. He asserts that, on one hand, the DOC was obligated to release the records absent an exception but, on the other hand, it also would want to protect its employees' personal information and prevent a workplace, employee/employer conflict. He argues, because of the parties' employee/employer relationship, no party was in a position to zealously advocate for the release of the records, which made for a proceeding that was not truly adversarial. Under the circumstances of this case, we agree.

Here, the injunction action sought to prevent the DOC from disclosing certain records. In the trial court, the DOC agreed to enjoin the documents from disclosure. As the record shows, in response to the employees' motion for an injunction, the DOC filed a memorandum stating "it has no opposition to [its employees'] motion." CP at 13; *see also* CP at 14 (DOC arguing why the records should not be disclosed). What happened here is that, with both the DOC and the employees opposing disclosure, no party to the action was a proponent of disclosure. Put another way, by virtue of the statutory rules, both the DOC and the employees shared the burden to prove that disclosure should not occur. *See Spokane Police Guild*, 112 Wn.2d at 35 (noting that the party seeking to prevent disclosure has the burden to prove the public record should not be disclosed). Considering the parties'

identical positions, no party was able to oppose nondisclosure or to ensure that the party bearing the burden of proof met that burden. The only person who wanted to see the records disclosed in this case was the person left out of the action, Mr. Parmelee.

In essence, Mr. Parmelee is claiming that, in this case, the trial court proceedings were not adversarial in that no party represented his position as the records requester. We agree. He was the sole party seeking disclosure, and his interest was, as a practical matter, impaired or impeded.[5] The very purpose of this injunction proceeding was to approve or deny Mr. Parmelee's request for records, and the record in this case shows that the parties to the action did not share or protect his interest whatsoever. An adversarial proceeding is what ensures the protection of a party's interests. In this case, Mr. Parmelee's records request was determined in the injunction proceeding.

Given these circumstances, the trial court (pursuant to CR 19(a)) should have joined Mr. Parmelee because he was a necessary party whose joinder was

[5]Any argument that RCW 42.56.550 prevents impairment of Mr. Parmelee's interests because it provides a means for Mr. Parmelee to seek judicial review of the injunction action misconstrues the provision. RCW 42.56.550(1) provides, "[a]ny person having been denied an opportunity to inspect or copy a public record *by an agency*," may make a motion to a superior court to have the agency show cause why it denied the request. (Emphasis added.) This statute does not provide a means to review a judicial decision; rather, it provides a means to review an agency's denial of a request, which occurs before any judicial proceedings have taken place.

feasible. In this case, Mr. Parmelee was the requester of records, and the absence of his joinder in an action seeking to enjoin his request impaired or impeded his interest in the subject of the action. Because of these facts, we hold that Mr. Parmelee was a necessary party whose joinder was mandatory under CR 19(a), and the failure to join requires that the judgment be vacated and the case remanded for proper joinder. Mr. Parmelee must be made a party and be given the opportunity to present appropriate arguments against enjoining the disclosure of the requested records.[6] At the very least, Mr. Parmelee should have been joined as a party and given notice and an opportunity to respond in writing to the request for the injunction.[7]

Mr. Parmelee also challenges the trial court's decision denying sanctions under CR 11 based on the lack of addresses and signatures of the plaintiffs' who filed the pleadings.[8] In this case, the underlying injunction action is a special

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[6]Since we hold that, under CR 19, the requester is an indispensable party (i.e., one whose joinder is mandatory) we need not address the other issues argued by the parties.

[7]In addition to not complying with CR 19(a)(2)(A), we note that the proceedings below failed to satisfy the requirements of CR 19(c), which requires a pleading asserting a claim for relief to "state the names, if known to the pleader, of any persons joinable under (1) or (2) of section (a) hereof who are not joined, and the reasons why they are not joined." Where a litigant knows of a necessary party under CR 19(a)(2)(A) who has not been joined in the action, the pleadings must identify the absent, necessary party and explain why that party has not been joined. Because the record here demonstrates that Parmelee was a necessary party under CR 19(a)(2)(A), the failure to identify him and explain his absence was additional error under CR 19(c).

[8]Because we hold Mr. Parmelee should have been joined under CR 19(a), we do not reach Mr. Parmelee's challenge to the denial of his motion to intervene.

proceeding as contemplated by CR 81. CR 81 provides that, generally, the civil rules govern all civil proceedings, "[e]xcept where inconsistent with rules or statutes applicable to special proceedings . . . ." Because the plaintiffs sought protection from disclosure of their addresses and other information under RCW 42.56.540 (information that was part of the PRA records request), we conclude Mr. Parmelee's request for some CR 11 remedy based on the failure to provide addresses in the complaint fails.[9]

Finally, Mr. Parmelee requests attorney fees on two bases. First, pursuant to RCW 42.56.550(4), the PRA authorizes awarding all costs, which includes reasonable attorney fees, to the individual who prevails against the agency in a public records request. Because we remand this case and do not resolve whether

[9]We note that the legislature has enacted legislation that will greatly curtail abusive prisoner requests for public records. RCW 42.56.565 (effective Mar. 20, 2009). If Parmelee's motivation for seeking public records is an intent to harass penitentiary staff members, this case presents a model example of the types of public records requests that this new legislation will allow courts to enjoin. RCW 42.56.565(1)(c) allows courts to enjoin the "inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities" if a court finds:

(i) The request was made to harass or intimidate the agency or its employees;
(ii) Fulfilling the request would likely threaten the security of correctional facilities;
(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or
(iv) Fulfilling the request may assist criminal activity.

Courts may "enjoin all or any part of a request" for public records in the above quoted circumstances, and based on the evidence, the court may also enjoin future requests by the same requester for a period of time the court deems reasonable. RCW 42.56.565(3).

Mr. Parmelee is entitled to the records requested, it is premature to award costs and attorney fees.

Second, this court has awarded attorney fees for equitable reasons where a party prevails in dissolving a wrongful injunction. *Cecil v. Dominy*, 69 Wn.2d 289, 418 P.2d 233 (1966). Although we are dissolving the injunction here, we are not determining whether the injunction was wrongful; rather, we are remanding the case to the trial court for a proper injunction proceeding that includes all necessary parties. As such, it would be premature to award costs and attorney fees based on equity.

CONCLUSION

We vacate the injunction and remand with directions to join Mr. Parmelee as a necessary party. We do not and need not reach the merits of the legal issue presented in the underlying RCW 42.56.540 action.

AUTHOR:
Justice Charles W. Johnson

WE CONCUR:

Justice Susan Owens

Justice James M. Johnson

Justice Tom Chambers